

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FREDDIE PIERRELOUIS, a minor under 14 years
of age by his Father and of Natural Guardian,
EDDY PIERRELOUIS and EDDY PIERRELOUIS,
Individually,

Docket No.: 08-CV-0123

Plaintiffs,

-against-

**ANSWER AND DEMAND
OF TRIAL BY JURY**

ESTHER BEKRITSKY, M.D., GERSON GLUCK, M.D.,
GAVIN JOFFE, M.D., ERIC SILVA, M.D., "JOHN"
SILVERBERG, M.D. (first name being fictitious and
unknown), FE MURPHY, M.D., MONSEY FAMILY
MEDICAL CENTER and GOOD SAMARITAN
HOSPITAL MEDICAL CENTER,

Defendants.
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Defendant, COMMUNITY MEDICAL AND DENTAL CARE, INC., s/h/a MONSEY
FAMILY MEDICAL CENTER, by their attorneys, MEISELMAN, DENLEA, PACKMAN,
CARTON & EBERZ P.C., as and for their Answer to the Verified Complaint of plaintiffs,
state as follows:

THE PARTIES

1. Defendant denies any knowledge or information thereof sufficient to form
a belief as to the allegations set forth in paragraphs numbered "1", "3", "6", "10", and
"11" of plaintiffs' Verified Complaint.

2. Defendant denies each and every allegation in the form alleged in
paragraph number "2" of plaintiffs' Verified Complaint, except admits that at all times
herein mentioned, the defendant ESTHER BEKRITSKY, M.D. was a physician duly
licensed by the State of New York.

3. Defendant denies each and every allegation in the form alleged in paragraph number "4" of plaintiffs' Verified Complaint, except admits that at all times herein mentioned, the defendant GAVIN JOFFE, M.D. was a physician duly licensed by the State of New York.

4. Defendant denies each and every allegation in the form alleged in paragraph number "5" of plaintiffs' Verified Complaint, except admits that at all times herein mentioned, the defendant ERIC SILVA, M.D. was a physician duly licensed by the State of New York.

5. Defendant denies each and every allegation in the form alleged in paragraph number "7" of plaintiffs' Verified Complaint, except admits that at all times herein mentioned, the defendant FE MURPHY, M.D. was a physician duly licensed by the State of New York.

6. Defendant denies each and every allegation in the form alleged in paragraphs numbered "8" and "9" of plaintiffs' Verified Complaint and refers all question of law to the Court.

**AS AND FOR A FIRST CAUSE OF ACTION
MEDICAL MALPRACTICE**

7. Defendant repeats, reiterates, and realleges each and every response set forth in the Answer above with the same force and effect as if set forth herein at length, as alleged in plaintiffs' Verified Complaint in paragraph number "12".

8. Defendant denies each and every allegation in the form alleged in paragraphs numbered "13", "14", "15", "16", "17", "18", "34", "35", "36", "37", "38", "44", "45", "46", "47", "48", "64", "65", "66", "67", and "68" of plaintiffs' Verified Complaint.

9. Defendant denies each and every allegation in the form alleged in paragraphs numbered "19", "20", "21", "22", and "23" of plaintiffs' Verified Complaint, except admits that ESTHER BEKRITSKY, M.D. participated in the medical care rendered to plaintiff FREDDIE PIERRELOUIS.

10. Defendant denies any knowledge or information thereof sufficient to form a belief as to the allegations set forth in paragraphs numbered "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "78", "79", "80", "81", and "82", of plaintiffs' Verified Complaint.

11. Defendant denies each and every allegation in the form alleged in paragraphs numbered "39", "40", "41", "42" and "43" of plaintiffs' Verified Complaint, except admits that GAVIN JOFFE, M.D. participated in the medical care rendered to plaintiff FREDDIE PIERRELOUIS.

12. Defendant denies each and every allegation in the form alleged in paragraphs numbered "49", "50", "51", "52" and "53" of plaintiffs' Verified Complaint, except admits that ERIC SILVA, M.D. participated in the medical care rendered to plaintiff FREDDIE PIERRELOUIS.

13. Defendant denies each and every allegation in the form alleged in paragraphs numbered "69", "70", "71", "72" and "73" of plaintiffs' Verified Complaint, except admits FE MURPHY, M.D. participated in the medical care rendered to plaintiff FREDDIE PIERRELOUIS.

14. Defendant denies each and every allegation in the form alleged in paragraphs numbered "74", "75", "76", "76" [sic], and "77" of plaintiffs' Verified Complaint, except admits that defendant, COMMUNITY MEDICAL AND DENTAL

CARE, INC., s/h/a MONSEY FAMILY MEDICAL CENTER, participated in the medical care rendered to plaintiff, FREDDIE PIERRELOUIS.

15. Defendant denies each and every allegation contained in paragraphs numbered "83", "84", "85", "86", "87", "88" and "89" of plaintiffs' Verified Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION
LACK OF INFORMED CONSENT**

16. Defendant repeats, reiterates, and realleges each and every response set forth in the Answer above with the same force and effect as if set forth herein at length, as alleged in plaintiffs' Verified Complaint in paragraph number "90"

17. Defendant denies each and every allegation contained in paragraphs numbered "91", "92", "93", "94", "95", "96", "97" and "98" of plaintiffs' Verified Complaint.

**AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF THE FATHER**

18. Defendant repeats, reiterates, and realleges each and every response set forth in the Answer above with the same force and effect as if set forth herein at length, as alleged in plaintiffs' Verified Complaint in paragraph number "99"

19. Defendant denies any knowledge or information thereof sufficient to form a belief as to the allegations set forth in paragraph number "100" of plaintiffs' Verified Complaint.

20. Defendant denies each and every allegation contained in paragraphs numbered "101" and "102" of plaintiffs' Verified Complaint.

**AS AND FOR A FOURTH CAUSE OF ACTION
VICARIOUS LIABILITY**

21. Defendant repeats, reiterates, and realleges each and every response set

forth in the Verified Answer above with the same force and effect as if set forth herein at length, as alleged in plaintiffs' Verified Complaint in paragraph number "103"

22. Defendant denies each and every allegation in the form alleged in paragraphs numbered "104" and "105", of plaintiffs' Verified Complaint.

23. Defendant denies each and every allegation contained in paragraphs numbered "106 and "107" of plaintiffs' Verified Complaint.

AS AND FOR A FIRST COMPLETE AND AFFIRMATIVE DEFENSE

24. Pursuant to Article 14-A of the CPLR, plaintiffs' claim for recovery of damages against the defendant shall be diminished in the proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct which caused the damages.

AS AND FOR A SECOND COMPLETE AND AFFIRMATIVE DEFENSE

25. Any claim based upon lack of informed consent is barred by the provisions of Public Health Law § 2805(d)4.

AS AND FOR A THIRD COMPLETE AND AFFIRMATIVE DEFENSE

26. Defendants hereby invoke the provisions of CPLR Article 16 and request that the jury herein be charged accordingly.

AS AND FOR A FOURTH COMPLETE AND AFFIRMATIVE DEFENSE

27. Upon information and belief, plaintiff's economic loss, if any, as specified in CPLR §4545 was replaced or indemnified in whole or in part from collateral sources and the answering defendant is entitled to have the Court consider the same in determining such damages as provided as CPLR §4545.

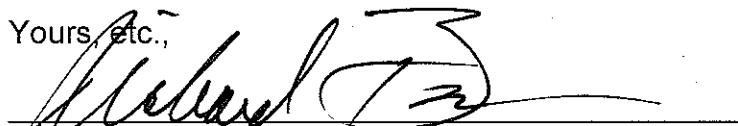
AS AND FOR A FIFTH COMPLETE AND AFFIRMATIVE DEFENSE

28. That the causes of action herein as to defendant, COMMUNITY MEDICAL AND DENTAL CARE, INC., s/h/a MONSEY FAMILY MEDICAL CENTER, may not be maintained because they are barred by the Statute of Limitations.

WHEREFORE, defendant, COMMUNITY MEDICAL AND DENTAL CARE, INC., s/h/a MONSEY FAMILY MEDICAL CENTER, demand judgment dismissing the plaintiffs' Verified Complaint herein as to the answering defendants, together with costs, interest and disbursements of this action.

Dated: White Plains, New York
March 10, 2008

Yours, etc.,



Richard C. Baker (RB-0143)
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